



WYOMING MINING ASSOCIATION

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Acting Director
Office of Standards, Regulations, and Variances
Mine Safety and Health Administration (MSHA)
1100 Wilson Boulevard, Room 2350
Arlington, VA 22209-3939

Received 10/23/06
MSHA/OSRV

Re: Proposed Rule RIN 1219-AB51

The Wyoming Mining Association (WMA) appreciates the opportunity to provide comments on the proposed rule on civil penalties. WMA is a statewide trade association representing 29 bentonite, coal, trona, and uranium mining companies in Wyoming. Wyoming leads the nation in the production of each one of these solid minerals.

The WMA shares with the Mine Safety and Health Administration (MSHA) a genuine concern for the safety of our miners. Each mining company in Wyoming has multi-pronged approaches to enhance the safety and health of miners and their work place. Although the events at Sago and Darby were tragic, MSHA's approach to a broad-brush, shotgun cure-all is not the answer.

As a trade association that represents conscientious operators, the WMA takes exception to the quote on page 53055, bottom of the third column:

The intended purpose of civil penalties under the Mine Act is to "convince operators to comply with the Act's requirements."

The WMA members have dedicated safety staff, providing countless hours of training, employ Behavior Based Safety Systems, and perform thousands of physical conditions audits per year. The industry investment in safety is unparalleled, and totals millions of dollars per year. Members also have sound partnerships with their workforces to promote safety.

The key to improved safety and health of the miners is engaging every employee and visitor in the safety process and hold them accountable for compliance with all safety rules and regulations. Increasing penalties will not accomplish this fundamental approach to safety accountability unless directed to the root cause of the violation, which in many cases is beyond the control of the mine operator. The scope of control can be determined by evaluating the overall safety program, training provided to miners, policies and procedures in place, and proactive safety efforts that are in place and documented. Operators should receive credit for implemented safety activities that are designed to be proactive and not reactive.

It is well understood that any violation of a mandatory safety standard is in fact a violation; however, citations have not shown any correlation with the mechanism of injury. Operators that spend countless hours performing those tasks, that are considered "upstream safety indicators", will be unjustly punished

for minor violations of a safety standard. The WMA members will also be unjustly punished due to their size alone. Why are higher penalties automatically imposed on larger operations? Is it only because MSHA feels larger operations can afford the penalties?

The Wyoming Mining Association Members significantly contribute to the overall safety record of the Mining Industry. Fatal accident data for all Coal and Metal / Non-Metal operators and contractors in Wyoming reveals the following:

Year	# of Fatal Accidents for Wyoming	Fatal Incident Rate	Fatal Accidents for all Industry	Fatal Accidents in Wyoming vs. Total Industry
2005	2	0.018	57	3.5%
2004	1	0.01	55	1.8%
2003	2	0.02	56	3.5%
2002	1	0.01	69	1.4%

The proposed rule is designed to punish those operators who realistically have better safety records and historically have received many 104(a), non S&S violations, for items such as missing the monthly inspection on one fire extinguisher, or a guard that is in place but the bolt wasn't holding it on the bracket. It is with considerable effort and dedication to safety that the WMA's member citation history shows very few Significant and Substantial violations and that they have very, very few high negligence violations. MSHA should look closely at the accident data and seek to drive results where the accidents are occurring. As indicated above, the accidents are not occurring in the Wyoming Mines. In cases where a miner made a conscious choice to disregard a safety standard after receiving training, having access to safety equipment and/or violating a company policy, MSHA cites the operator as being in violation when clearly it was a personal choice that caused the accident.

The penalty assessments for repeat violations should be considered only for S&S violations. Typically an S&S violation is one that would have a direct impact on safety and therefore, the penalty for repeat violations should only be covered for repeat S&S violations.

Shortening the conferencing time period will neither improve safety nor provide any advantage for MSHA. The conferencing process is overloaded presently. Shortening the time period will only add to this burden. Operators may have to react to this in one of two ways. First, if the operator missed the deadline inadvertently, citations that don't go to the conferencing officer will be contested on the penalty assessment. Secondly, operators who are investigating mitigating circumstance will send more citations to conference than is necessary just to ensure bases are covered. Both of these situations will further bog down the system. The problems with the conferencing process are not necessarily with the operators taking citations through the channels, but rather the inefficiency of the process in general. Some WMA members have had citations in conference for 6 months at the present time. One citation request for conference was made well within the 10 day time period and the company has not received any reply to their request after 2 months. It is also very difficult to take care of citations at the inspection closeout to try to eliminate the conferencing or avoid the conferencing process all together, when all inspectors participating in the inspection are not present at the closeout.

WMA would like to make the following specific recommended changes to the rule.

100.3(c) *History of previous violations*

WMA recommends that MSHA adopt an 18-month period instead of the proposed 15-month period.

An 18-month period would allow for the completion of three regular inspections at surface operations and four or five at underground operations. This time frame would allow for a more realistic comparison of performance and provide the operation the necessary time to ensure sustainability of improvements/actions and would be a more accurate reflection of VPID.

100.3(f) *The demonstrated good faith of the operator in abating violation*

WMA recommends that MSHA reconsider its proposal to decrease good faith efforts to 10% (from 30%).

This is a considerable reduction and operators who are diligent in correcting violations should receive consideration. Not all violations are known to the operator and when an operator commits the resources to quickly abate a noncompliance situation, a 10% reduction in the penalty does not correlate to that effort. Additionally, with the significant increase in potential penalties, the reduction in the recognition of good faith is inconsistent.

100.6(b) Procedures for review of citations...

WMA recommends that MSHA reconsider its proposal to revise the timeframe for requesting a conference.

The current 10 day limit is an appropriate timeframe that allows adequate time for an organization to determine if a conference should be requested. Due to various shift schedules that exist within the mining industry, it could be expected that an organization will be unable to gather the required information to make the appropriate determination to conference a citation within the proposed 5 day timeframe.

In summary, the WMA believes that there are serious problems with the proposed rule which start by penalizing larger operators who contribute greatly to the industry safety record being as low as it has ever been. These large operators have a proven track record of good faith safety programs and solid safety performance, including partnership projects, safety studies and many other proactive safety practices. Now the agency intends on punishing them for nothing more than size. Finally, cited safety violations and mechanisms of injuries have historically shown little or no correlation, so there is no basis for the Agency's action to simply raise the monetary penalty. There are better ways to improve the safety record of the industry and the Wyoming Mining Association would be willing to work with the Agency to find those alternatives.

Thank you for allowing my comments.

Sincerely,
WYOMING MINING ASSOCIATION



Marion Loomis
Executive Director